

RSA No. 2058 of 2014 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA No. 2058 of 2014 (O&M)
Date of Decision: 21.3.2017**

Harbhajan Singh

.....Appellant

Vs.

Gurcharan Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Surinder Sharma, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Unsuccessful defendant is in regular second appeal, against the concurrent findings of facts recorded by both the learned courts below, whereby suit for possession by way of specific performance of agreement to sell dated 30.1.2006, filed by the plaintiff-respondent No.1 was allowed.

Briefly put, facts necessary for decision of the present appeal, as recorded by the learned trial court in para 2 and 3 of its impugned judgment, are that plaintiff filed suit for possession as owner by way of specific performance of contract dated 30.1.2006 regarding the property measuring 1 kanal out of the land measuring 26 kanals 9 marlas bearing khasra Nos.137M//6/1(5-4), 16(2-11), 424(3-16), 425(2-10), 426(3-1),

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137M//24/1/2(2-5), 15/2(5-8), 137M//14/1/2(1-1), 14/3(0-13), situated in the area of Dharamkot, District Moga on payment of ₹4,60,000/- less ₹25,000/- already paid by the plaintiff to defendant No.1 as earnest money. In the alternative, plaintiff sought relief for the recovery of ₹50,000/- i.e. ₹25000/- being refund of earnest money and ₹25000/- as damages along with consequential relief of permanent injunction, restraining the defendants from interfering with the lawful, peaceful possession of the plaintiff, ejecting and dispossessing the plaintiff out of said property forcibly, illegally and also from alienating, transferring or disposing of the said property in any manner and for declaration to the effect that the alleged sale deed dated 27.6.2008 allegedly executed by defendant No.1 in favour of defendant No.3 regarding the land measuring 12 marlas 2 Sarsahis out of the above said land was altogether illegal, unjust void at law and same was liable to be set aside and plaintiff was not bound by the same.

It was averred that defendant No.1 was recorded owner of the property in dispute and he entered into an agreement with the plaintiff and defendant No.2 vide agreement of sale dated 30.1.2006. Defendant No.2 did not join with the plaintiff, therefore he connived with defendant No.1. Possession of land of one kanal out of suit land was delivered to the plaintiff and since then, he was in possession of the suit property. Plaintiff claimed his right over 1/ 2 share of property measuring 2 kanals. Plaintiff had always been ready and is still ready and willing to perform his part of the contract as per terms and conditions of the agreement deed. Plaintiff went to the office of Joint Sub Registrar Dharamkot with ready cash on 30.6.2006 but defendant No.1 did not come there intentionally and, thus, violated the terms and conditions of the agreement deed. It was further averred that plaintiff

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was entitled to get the decree of possession by way of specific performance of contract of land 1 kanal on payment of ₹4,60,000/-. Alternative relief for recovery of ₹50,000/- was also sought by the plaintiff on account of refund of earnest money of ₹25000/- and damages. Defendant No.3 was alleged to have purchased land measuring 12 marlas 2 sarsahis out of suit land but plaintiff did not admit the factum and validity of alleged sale deed which was illegal, null and void and was liable to be set aside.

Having been served, defendant No. 1 appeared and filed his contesting written statement, raising more than one preliminary objections. Defendant No.2 was proceeded against ex parte, whereas the plaintiff sought permission to withdraw his suit against defendant No.3 and accordingly, suit against respondent No.3 was dismissed as withdrawn. Plaintiff filed his replication. On completion of pleadings of the parties, learned trial court framed the following issues:-

1. *Whether the plaintiff is entitled for decree of possession by way of specific performance of contract dated 30.1.2006? OPP.*
2. *Whether plaintiff is entitled to recover the alleged amount along with interest being alternative relief? OPP.*
3. *Whether plaintiff was and is still ready and willing to perform his part of contract? OPP.*
4. *Whether plaintiff is also entitled for decree of permanent injunction, as prayed for? OPP.*
5. *Whether suit of the plaintiff is not maintainable in the present form? OPD.*
6. *Whether plaintiff has no locus standi to file the present suit? OPD.*
7. *Whether plaintiff has not come to the court with clean hands? OPD.*
8. *Relief.*

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With a view to prove their pleaded cases, both the parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiff has duly proved his case. Accordingly, suit for possession by way of specific performance of the agreement to sell was decreed by the learned trial court vide its impugned judgment and decree dated 13.2.2013. Feeling aggrieved, defendant No.1 filed his first appeal, which also came to be dismissed by the learned first appellate court vide its impugned judgment and decree dated 19.12.2013. Hence this regular second appeal, at the hands of defendant No.1.

Heard learned counsel for the appellant.

A bare joint reading of both the impugned judgments rendered by the learned courts below, recording their concurrent findings of facts, would make it crystal clear that plaintiff has duly proved his case by leading cogent and convincing evidence. He himself appeared as PW1. Agreement to sell dated 30.1.2006 was proved on record as Ex.P1. Extracted copy of deed register was proved on record as Ex.P2. Shavinder Singh, an attesting witness to the agreement to sell, was examined as PW2 who corroborated the version of the plaintiff and proved due execution of the agreement to sell.

Another attesting witness to the agreement to sell was Jagir Singh-PW3. All these three witnesses were put to lengthy cross-examination, at the hands of defendant No.1-appellant, but nothing adverse could be elicited from any of these material witnesses. Plaintiff also duly proved his pleaded case, establishing on record that he always remained

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ready and willing to perform his part of the contract. Application (Ex.P-4), moved by the plaintiff before the Sub-Registrar, duly proved this fact. Having said that, this Court feels no hesitation to conclude that learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Appellant-defendant No.1 alleged that agreement to sell was a forged and fabricated document. Although defendant No.1-appellant raised the plea of fraud but did not make any effort to discharge his onus to prove the same. Once the plaintiff was intending to raise the plea of fraud, heavy onus was on him to prove it, by leading cogent and convincing evidence, however, in the present case, appellant has miserably failed to do, for the reasons best known to him.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court:-

1. Sri Gangai Vinayagar Temple and another Vs. Meenakshi Ammal and others, 2015 (2) SCC (civil) 350 (SC)
2. Punjab Urban Planning and Dev. Authority Vs. M/s Shiv Saraswati Iron and Steel Re-Rolling Mills, 1998 AIR (SC) 2352 (SC)
3. Gautam Sarup Vs. Leela Jetly and others, 2008 (7) SCC 85 (SC)
4. Zarina Siddiqui VS. A.Ramalingam alias R.Amarnathan, 2015 (1) SCC 705 (SC)
5. Swarn Singh Vs. Swarn Kaur and others, 2004 (2) RCR (civil) 505 (P&H)
6. Santa Singh Vs. Tarsem Singh, 2010 (67) RCR (civil) 520 (P&H)

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7. M/s Machhi Ram Kishan Singh Sidhana, Rice Mills Vs. Sham Singh and others, 2015 (9) RCR (civil) 506

Before arriving at a judicious conclusion, learned Additional District Judge re-considered the true facts of the case as well as evidence available on record in correct perspective. Relevant findings recorded by the learned Additional District Judge in para 16 of his impugned judgment, which deserve to be noticed here, read as under:-

“From the evidence given by plaintiff while appearing as PW1 and evidence given by attesting witnesses of the agreement to sell Ex.P1, while appearing as PW2 and PW3, it is clear that they have corroborated the version of the plaintiff and have proved the agreement to sell Ex.P1 on the file and they have categorically stated that agreement to sell Ex. P1 was signed by appellant/ defendant No.1. Both these witnesses have also deposed that agreement to sell Ex.P1 and sale deed Ex.P2 bear signatures of same person i.e. Harbhajan Singh appellant/ defendant No.1. It has been rightly observed by learned lower Court that evidence of the Handwriting Expert was the best evidence to prove that signatures on Ex.P1 and Ex.P2 are not of one and same person and same does not resemble with each other but defendant has failed to do so and adverse inference goes against him. It has been rightly held by learned lower Court that agreement to sell Ex.P1 bears signatures of appellant/ defendant No.1. It has been rightly held that readiness and willingness of plaintiff is clear from application Ex.P4 which he and defendant No.2 moved before Joint Sub Registrar, Dharamkot for getting their presence marked on the failure of defendant No.1 to execute sale deed in their favour.”

During the course of hearing, learned counsel for the appellant

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failed to point out any patent illegality or perversity in either of the impugned judgments rendered by the learned courts below. He also could refer to any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179**.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

21.3.2017
Ak Sharma

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No